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Closing remarks by the Chairman of the Ad Hoc Committee, Mr. Philippe Kirsch

1. As we are about to conclude these proceedings, I would like to begin by renewing our collective thanks to the Russian Federation for taking the initiative to bring the threat of nuclear terrorism to the attention of the General Assembly. As stated by many delegations, the possibility of an armed attack on a nuclear installation, or the use of nuclear materials to cause serious harm in so many ways, are issues that deserve to be taken seriously and addressed effectively by the international community.

2. We have come a long way in these two weeks, in our review of the Russian proposal for a new Convention on the Suppression of Acts of Nuclear Terrorism (A/AC.252/L.3 and Corr.1 and 2) and related international instruments. Again, I would like to express my gratitude to the Russian delegation for helping us to clarify many important issues, and for its openness in addressing these issues and improving the original draft. I would also like to express my thanks to all other delegations, many of whom have provided written texts to help us in our task, as well as to the International Atomic Energy Agency (IAEA), which has provided us with invaluable expertise throughout our work.

3. Our discussion has ranged from general comments on the approach that the international community should adopt to deal with the issue of nuclear terrorism, to very specific comments on the language that should be used in particular articles of the draft text.

General discussion

4. The general part of our discussion, which took place early last week, and to some extent this morning, reflected, I believe, a widely shared view that any instrument that might be adopted should complement, and be consistent with, those international instruments that already exist. Although it is recognized that some overlap is probably unavoidable, it seems clear that a new instrument should not undermine work that has already been done internationally in our collective struggle against international terrorism, or in past efforts to ensure the physical protection of nuclear material.

5. The question was therefore raised whether we should prepare an entirely new instrument, or draft either a protocol to the Convention on the Physical Protection of Nuclear Material (the "Physical Protection Convention") or a protocol to the International Convention for the Suppression of Terrorist Bombings (the "Terrorist Bombing Convention").

6. The logic behind the first suggestion – that a protocol to the Physical Protection Convention be drafted – stems largely from the fact that the Physical Protection Convention deals with the protection of nuclear materials and the criminalization of certain acts involving the use of nuclear materials. These are important elements of the Russian draft, and indeed, some of its provisions are drawn from the

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Physical Protection Convention itself. On the other hand, it was pointed out during our debate that the Physical Protection Convention is largely a self-contained instrument, which applies only to nuclear materials used for peaceful purposes, and to which only a limited number of States are party. In addition, it was emphasized that the proper focus of any possible instrument should not be the physical protection of nuclear material, but rather, should be counter-terrorism.

7. The logic behind the second suggestion – an optional protocol to the Terrorist Bombing Convention – stems from the fact that the subject matter of the Russian proposal is terrorism, which is also the subject of the Terrorist Bombing Convention. In some ways, to follow that course could make our work simpler, since then, in principle, we would only have to develop those provisions that are new and particular to nuclear terrorism. The other provisions of the Terrorist Bombing Convention would apply to the new instrument without any need for new drafting. However, over the course of the discussions, and particularly in the last couple of days, it became apparent that some delegations are not convinced that all of the provisions of the Terrorist Bombing Convention are appropriate to deal with the problem of nuclear terrorism, and therefore that they should not be repeated automatically in this context.

8. A final determination as to whether we need a new instrument or a protocol will depend on the answers that delegations are able to provide to the questions raised above. But I would like to add that remaining uncertainties concerning the form of the instrument or, indeed, some of its basic provisions such as definitions and scope of application, did not prevent us from making substantial progress in our consideration of the subject at the current session. And I do not believe we should let these uncertainties develop into a stumbling block when we move on to the next phase of our work.

New provisions relating to nuclear terrorism

9. I shall address briefly below some specific provisions of the draft instrument that we have been considering.

10. As I mentioned above, the Russian proposal contains a number of provisions that are new and unique to nuclear terrorism. These provisions will require close attention in the future, particularly those that define nuclear materials and facilities, and I hope in this connection that we can count on the continued participation of IAEA in our future discussions of these provisions.

11. Many questions have also been raised in our discussion of the definition of the criminal offence. Should nuclear installations be included, or only nuclear materials? Should a threat to use nuclear materials to cause harm be explicitly defined as an offence? Should only "credible" threats be offences? Should harm to the environment be addressed through this instrument? Should harm to health? These are but a few of the many questions that arose, and were addressed by delegations in a number of very useful written proposals. Clearly, further reflection will be necessary before any conclusions can be reached on the question of definitions and, of course, on the broader question of the scope of the instrument.

12. A final article I would like to mention among the provisions that specifically concern nuclear terrorism is article 10 of the Russian draft, which provides for an obligation to return nuclear materials to the State to which they belong, or to the State of origin. Our discussion of this article has highlighted the many complex issues involved in the implementation of this article. In my view, it would be very helpful if delegations would consider the points raised during the discussion of article 10 before our next session, in order to determine how this key portion of the Russian proposal might best be formulated.

Language of the Terrorist Bombing Convention

13. If the Ad Hoc Committee, or the Working Group of the Sixth Committee, eventually decides that it prefers to conclude a separate convention, rather than a protocol, then the question still remains to what extent we should draw from the language of the Terrorist Bombing Convention. It was pointed out several times that since the Terrorist Bombing Convention was concluded after the Russian Federation had prepared its proposal, it could not be taken into account in the drafting of that proposal. Indeed, the Russian delegation noted on several occasions that its own preference would be to align the provisions of a new instrument with that Convention whenever possible.

14. Compared to previous occasions when we have developed new instruments, we are now in a very particular, and in many ways a very privileged situation. In the past, whenever a new convention designed to deal with a particular form of international terrorism was prepared, it was often necessary to determine the extent to which that

convention should reflect new developments in international criminal law since the adoption of the previous counter-terrorism instrument, often dating back a number of years. Thus, almost 10 years passed between the International Convention against the Taking of Hostages and the Convention on the Safety of Maritime Navigation, and almost another 10 years between the latter convention and the Terrorist Bombing Convention. This time, we are able to refer to an instrument that is less than three months old. The question of updating the instrument in that sense therefore does not arise. that is not to say that any departure from the Terrorist Bombing Convention on provisions relating to international criminal law is inconceivable. However, before doing so, we should have a hard look at whether such a departure is desirable, both on its merits and from the perspective of the interpretation of previous instruments.

15. Having said that, as we all know, some provisions in the Terrorist Bombing Convention are not of a technical nature, but instead were drafted to achieve a certain balance among different political considerations. The question then arises: should that same balance be reintroduced here? Or are there reasons to take a different approach? I cannot respond to that question at this stage. All I hope here is that what we know are very difficult issues will not be unnecessarily raised or reopened. Much will depend here on our future discussions.

16. So, yes, uncertainties remain as to how to deal with a number of complex issues, including the exact nature of the offence, the materials or facilities to be included, the scope of the Convention and the balance among certain articles that were new to the Terrorist Bombing Convention and have now been also considered in the context of nuclear terrorism. However, once again, these uncertainties have not prevented us from making tremendous progress during the current session of the Ad Hoc Committee and should not in our future work.

Future work

17. In order to build on the very useful discussions we have had, I believe it will be important between now and the next session for States to focus on the content of the exchanges that we have just completed. The next question is: how can we build most effectively at the next session on the progress that we have made? Judging from comments that were made to me by various delegations during the course of this session, my own impression is that, once debate on specific provisions has resumed, it might be helpful for delegations to be able to work in a more focused manner. That work could be facilitated by the preparation of texts that not only reflect individual suggestions, but are based on our discussions in a more comprehensive and integrated manner. But this will have to be a gradual process, given the different nature of many provisions of the draft instrument, and we will have to decide at our next session how best to proceed.